

ORIGINAL

DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

PUBLIC UTILITIES
COMMISSION

2009 OCT -2 P 3:29

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
Approval of Rate Increase and Revised Rate)
Schedules and Rules.)

DOCKET NO. 2008-0083

DIVISION OF CONSUMER ADVOCACY'S
RESPONSE TO COMMISSION'S INFORMATION REQUESTS

Pursuant to Commission's letter dated September 16, 2009, the Division of Consumer Advocacy submits its **RESPONSE TO COMMISSION'S INFORMATION REQUESTS (PUC-IR-117)** in the above docketed matter.

DATED: Honolulu, Hawaii, October 2, 2009.

Respectfully submitted,

By Catherine P. Awakuni
CATHERINE P. AWAKUNI
Executive Director

DIVISION OF CONSUMER ADVOCACY

DOCKET NO. 2008-0083

HAWAIIAN ELECTRIC COMPANY, INC.

**DIVISION OF CONSUMER ADVOCACY'S RESPONSE TO
COMMISSION'S INFORMATION REQUESTS**

PUC-IR-117

- Reference:** 1) **Stipulated Settlement Letter ("Stipulation"), filed May 15, 2009 in Docket No. 2008-0083 regarding HECO's application for Approval of Rate Increase and Revised Rate Schedules and Rules.**
- 2) **Decision and Order, filed on August 5, 2009 in Docket No. 2007-0346 regarding HECO's Application for Approval of a Biodiesel Supply Contract with Imperium Services, LLC, and to Include Contract Costs in HECO's Energy Cost Adjustment Clause ("Decision and Order").**

The Stipulation between Hawaiian Electric Company, Inc. ("HECO"), the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Department of Defense establishes that the costs related to the Campbell Industrial Park Combustion Turbine Unit 1 ("CIP CT-1") are utilized to determine the revenue increase and revenue requirement for the HECO 2009 test year rate base. Stipulation, Exhibit 1, at 1.

Subsequent to the Stipulation, the Commission issued the referenced Decision and Order, which denied HECO's request to approve the Amended Contract between Imperium and HECO. The Decision and Order also reminded HECO "that it cannot operate [CIP] CT-1 using a fuel other 100% biofuels, absent prior approval of the commission." Decision and Order, at 5 n.9.

In light of the above, please indicate whether you expect that CIP CT-1 will be used and useful in the 2009 test year and fully explain the basis for your position.

RESPONSE: Given the Commission's finding in the Interim Decision and Order in the instant proceeding, filed on July 2, 2009, and absent a finding from the Commission to the contrary, it is the Consumer Advocate's interpretation that the CIP CT-1 cannot be found permanently used

and useful at this time. That being said, however, the Consumer Advocate does expect that CIP CT-1 could be used and useful in the 2009 test year due to, but not limited to, the following considerations:

- The recorded peak load for 2009 to-date (provided informally by HECO as of September 25, 2009) for HECO's system was 1,220 MW, which is higher than the May 2009 Sales & Peak ("S&P") for the years 2009 through 2013, See Docket No. 2008-0083, HECO ST-4 at 10-11. This updated forecast represents an approximate 3.1%¹ higher forecast than the May 2009 forecast and translates into a higher reserve capacity shortfall for the 2009 test year;²
- Based on the Consumer Advocate's understanding of HECO's system and the capabilities of the existing generating units, availability of CIP CT-1 may be critical to

¹ Based on HECO's May 2009 S&P forecast, its net system peak, with future demand side management but without load management and Rider I, for the year 2009 was 1,183 MW.

² It should be noted, however, that the Company's reserve capacity analysis conducted in Docket No. 2008-0083 HECO ST-4 is based on its Loss of Load Probability ("LOLP") criteria in which the Company's system must have sufficient generation capacity to serve system load with the incurrence of one day's outage of the system in every 4.5 years. In Docket No. 05-0145, the Consumer Advocate raised concerns that HECO's LOLP may need to be more stringent (i.e., higher, such as one day's outage in every six years) if reliability concerns outweighed other factors, such as cost. The Consumer Advocate is not recommending a specific value for the LOLP criteria at this time, but it should be recognized that establishing a more stringent criteria to accommodate higher reliability expectations with the introduction of more intermittent renewable sources of energy would likely result in the forecasted reserve capacity shortfall over the years 2009 and beyond to be even greater than is currently estimated.

mitigate risks to the system due the occurrence of a natural disaster or other serious disturbance;

- Similarly, availability of CIP CT-1 may prove to be necessary during critical and high-risk scenarios such as (1) insufficient spinning reserve to cover the loss of any generation unit; (2) insufficient generation to serve load; and (3) the occurrence of an island-wide blackout; and
- The Commission's acknowledgement that HECO will work with Commission and the Consumer Advocate if there is an interruption of the biofuel supply, an emergency, or an operational problem affecting the use of CIP CT-1. See, Decision and Order No. 23457, filed on May 23, 2007, in Docket No. 2005-0145, at 32.

The Commission's query presents a challenge as it appears to request, from the Parties, a response that seeks to contradict the prior formal determination by the Commission, in the referenced Docket No. 2007-0346, establishing that HECO shall not deem CIP CT-1 "used and useful" without prior Commission approval for use of any fuel other than 100% biofuels.

Current Status of CIP CT-1.

In Docket No. 05-0145, regarding HECO's application for Commission approval to commit funds for the CIP CT-1, the

Commission granted approval provided that "no part of the Project may be included in HECO's rate base unless and until the Project is *in fact installed, and is used and useful.*" See, Docket No. 05-0145, Decision and Order No. 23457, at 53-54, Ordering Paragraph No. 1. The Commission, subsequently, expressed concern that HECO negotiated pricing and terms which were not reasonable nor prudent and not in the public's interest in denying HECO's *application for approval of a Biodiesel Supply Contract dated August 13, 2007 between HECO and Imperium Services, LLC.* See, Docket No. 2007-0346, Decision and Order, at 18-19 ("Imperium Decision and Order"). Therefore, as it currently stands, even though construction of the unit has been completed, CIP CT-1 *is unable to be scheduled for normal dispatch operations, absent approval to operate CIP CT-1 with a fuel other than 100% biofuels and is, thus, not capable of being considered to be used and useful, if "available for dispatch" is one of the relevant criteria that must be met by a generating asset.*

Used and Useful Standard.

The concept of "used and useful" traditionally represents property or utility plant assets that are reflected in the utility's Plant In Service and included in rate base, when and if such property or *plant assets are currently providing or capable of providing utility*

service to the consuming public. Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, Accounting for Public Utilities, § 4.03 (2004). Thus, traditionally, the determination of used and usefulness relied upon the completion of the construction or procurement of a plant, property, or equipment item and the reclassification of that item from a plant account, such as construction work in progress or, perhaps, property held for future use, to the Plant In Service primary account.

Fuel Supply Complications.

As will be discussed, in more detail herein, given the fuel restrictions attached to CIP CT-1, this determination is more complicated than a "traditional" plant, property, or equipment item. Since the Commission has indicated that CIP CT-1 cannot be dispatched unless fueled by a biofuel, the unit can be neither used nor useful since, pursuant to the Commission's mandate, the unit cannot be run without a reliable source of biodiesel. This is a novel and unique situation that appears ripe for Commission determination since the issue of the operational status of a new generating unit with issues surrounding the availability of its required fuel has not occurred before.

In Docket No. 05-0145, the Consumer Advocate offered the recommendation that HECO be allowed to commit the funds

required and to construct CIP CT-1, but with the requirement that biofuels be used to fuel the unit and that HECO work with the Department of Business and Economic Development and Tourism ("DBEDT") to develop a local resource for biofuels (see, e.g., CA-T-1 in Docket No. 05-0145, page 76). The Consumer Advocate's recommendation was predicated on various factors such as the Consumer Advocate's support for facilitating the transition to a more sustainable energy future and also relied upon, at least in part, on various assertions made by outside parties and DBEDT regarding the status of the biofuels industry and the probability of expected availability of biofuels. As recent events have shown, however, the current status of the biofuel industry has not supported the vision and expectations that existed at the time of Docket No. 05-0145.

It should be noted, however, that even with the high expectations for the biofuel industry that existed during the Docket No. 05-0145 proceeding, the parties to that docket recognized the possibility that there may unforeseen events that might cause an interruption of the supply of biofuel. Hence, as articulated in Exhibit A to the Joint Stipulation filed in Docket No. 05-0145, HECO would seek to work with the Consumer Advocate and Commission to address the possible interruption of the biofuel supply in the event of an interruption in the fuel supply.

As stated above, in its Decision and Order No. 23457, Docket No. 2005-0145, the Commission noted the need to address contingencies due to the possibility of an interruption of the biofuel supply, emergency or operational problem affecting the use of CIP CT-1 as provided in the Joint Stipulation between HECO and the Consumer Advocate. See, Decision and Order No. 23457, at 32. The Commission made a specific finding that "the need is immediate, and that the Project must be installed by July 2009 or as early as possible, as requested by HECO." Id. at 43. The Commission also stated "that the Project may not be perfect. However, this Project is a step in the right direction toward energy security and sustainability, as we address the immediate and growing need for electricity generation." Id. at 48.

Emergency Usefulness Consideration.

The Consumer Advocate's response to HECO's Proposal for Emergency Use of Campbell Industrial Park Combustion Turbine No. 1, filed on September 30, 2009, stated the Consumer Advocate's support for HECO's proposal to be delegated the responsibility to make decisions related to using CIP CT-1 for emergency purposes including natural disasters, serious disturbances, and similar critical and high risk scenarios related to system reliability and ability to provide electric service. Despite the

Commission's footnote, in its Imperium Decision and Order, referencing HECO's Adequacy of Supply report to refute HECO's claims of urgency, (see, Imperium Decision and Order, footnote 50, at 19), the Consumer Advocate considered the information provided in HECO's Supplemental Testimonies and Exhibits filed in the instant docket to determine that HECO's system has the potential to experience reserve capacity shortfalls for all years between 2009 and 2013 with, perhaps, the exception of 2010 and 2011, respectively.

Therefore, depending on the Commission's ruling on the Company's request to use CIP CT-1 in certain emergency situations, it is possible that, even if not found to be permanently used and useful, the CIP CT-1 may be used and useful for certain circumstances.

As discussed above, the traditional criteria considered when determining "used and useful" is not readily applicable to the instant situation. The Consumer Advocate submits that CIP CT-1 is not used and useful when applying the traditional criteria because the unit cannot be scheduled for normal dispatch operations until the fuel supply complications are resolved. The record established by Docket Nos. 2005-0145, 2007-0346 and 2008-0083 collectively represent exceptional circumstances that could be used in support of a determination by the Commission that CIP CT-1 is not

reasonably considered permanently used and useful at this time. However, in recognizing the need for this unit and for the purpose of energy security and sustainability for the 2009 test year, it may be useful and actually used. If the use of the asset in this capacity, even if limited in comparison to the original purpose of the unit, is judged to be sufficient by the Commission to justify rate base inclusion, an order to this end would appear to be within the Commission's jurisdictional authority.

In the alternative, the Consumer Advocate contends that the Commission could consider its precedence of treating certain property investments that are not presently used and useful as Property Held for Future Use ("PHFFU") in rate base. PHFFU assets are reflected in rate base, which allows a return on the investment, but not a return of the investment (depreciation) until that item is later classified as plant in service. If this alternative is to be considered, however, other relevant considerations are required.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S RESPONSE TO COMMISSION'S INFORMATION REQUESTS (PUC-IR-117)** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

DARCY ENDO-OMOTO
VICE PRESIDENT
GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, Hawaii 96840-0001

1 copy
by hand delivery

DEAN K. MATSUURA
MANAGER- REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, Hawaii 96840-0001

1 copy
by hand delivery

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL, ANDERSON, QUINN & STIFEL
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

1 copy
by hand delivery

Counsel for Hawaiian Electric Company, Inc.

DR. KAY DAVOODI
NAVFAC HQ ACQ-URASO
1322 Patterson Avenue, S.E. Suite 1000
Washington Navy Yard
Washington, DC 20374-5065

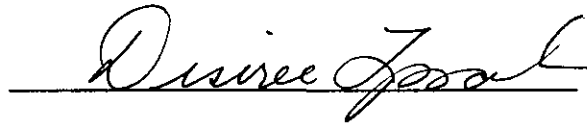
1 copy
by U.S. mail

JAMES N. MCCORMICK, ESQ.
ASSOCIATE COUNSEL
NAVAL FACILITIES ENGINEERING COMMAND, PACIFIC
258 Makalapa Drive, Suite 100
Pearl Harbor, HI 96860-3134

1 copy
by U.S. mail

Counsel for Department of Defense

DATED: Honolulu, Hawaii, October 2, 2009.

A handwritten signature in cursive script, reading "Desiree Zook", is written over a horizontal line.